IN THE BOMBAY HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1 OF 2004

Shreeji Dham Developers Pvt. Ltd. ... Petitioner.

vs.

Amichand C. Shah and others. ... Respondents.

Mr.J.M.Sidhwa i/b. Manoj Bhatt, for Petitioner.

Ms.Deepa Chawan i/b. M/s.Little & Co., for Respondent nos.1 to 13.

Mr.Shah, for Respondent no.14.

CORAM: D.K.DESHMUKH,J.

DATED: 22nd March, 2005.

P.C.:-

1. By this petition, the petitioner challenges the Award dated 5th July,2002. This Award is made by the sole Arbitrator. The first challenge to the Award is that

there is no arbitration agreement between the parties. The objection as regards the maintainability of the petition is also taken on the ground that the petition is barred by the law of limitation. The objection is that the Award is signed by the Director of the Petitioner on 5th July,2002, but the petition has been filed on 30th June,2003. This objection in my opinion, has no substance. Perusal of the Award shows that there was a meeting held on 15th December,2001. The Award was made on 5th July,2002. It is nobody's case that on that date there was any arbitration meeting held. Neither the respondents nor the Arbitrator explained as to how on 5th July,2002, the Director who is supposed to have signed the Award was present before the arbitrator. Sub-section (5) of Section 31 of the Arbitration & Conciliation Act,1996, casts duty on the Arbitrator to serve a copy of the Award on the parties. The Arbitrator nowhere says that the copy of the Award has been served on the petitioner. In this view of the matter therefore, the case of the petitioner will have to be accepted that he became aware of the Award when he received the notice from the Solicitors of the Respondents.

2. So far as the existence of arbitration clause is concerned, the respondents do not dispute that there

is no written arbitration agreement. According to the respondents, the arbitration agreement came into existence because of the correspondence between the parties. In that regard, reliance is placed on the letter dated 3rd December,2001 from the Arbitrator to the parties. Perusal of the provisions of Sub-section (4) of Section 7 of the Act shows that the Arbitration agreement can be brought about by exchange of letters between the parties. The respondents do not rely on any exchange of letters between the parties. Thus, it is clear that there is no existing arbitration agreement between the parties. It further appears that though it is nobody's case that the parties agreed on the arbitrator following procedure different than the one which is laid down by the Act, the Arbitrator has not followed the procedure that is laid down by the Act. There is no statement of claim filed by the respondents, there is no statement of defence filed by the petitioner. The proceedings were not conducted by the Arbitrator in accordance with the procedure laid down in the Arbitration & Conciliation Act,1996 and the Award has been made. Taking overall view of the matter therefore, in my opinion, the Award is vitiated and is liable to be set aside. It is accordingly, set aside. The respondents are directed to pay costs of this petition to the petitioner as incurred by the petitioner.

22.3.2005 ---